

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 IN RE: § CASE NO. 20-33948-11
5 FIELDWOOD ENERGY LLC, § HOUSTON, TEXAS
6 DEBTOR. § TUESDAY,
§ JUNE 7, 2022
§ 1:29 P.M. TO 2:38 P.M.

7 MOTION HEARING (VIA ZOOM)

8 BEFORE THE HONORABLE MARVIN ISGUR
9 UNITED STATES BANKRUPTCY JUDGE

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12 APPEARANCES: SEE NEXT PAGE

13 (Recorded via CourtSpeak; No log notes)

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(Please also see Electronic Appearances.)

1 **HOUSTON, TEXAS; TUESDAY, JUNE 7, 2022; 1:29 P.M.**

2 THE COURT: Good afternoon, please be seated.

3 (Pause in proceedings.)

4 THE COURT: All right. We are here in the
5 Fieldwood Energy case, it is 20-33948. We'll take
6 appearances in court. If you'll please approach the podium
7 and make your appearances. And then anyone who wishes to
8 appear on the phone, if you'll please turn on your camera
9 and press five star. You're welcome to listen. If you
10 don't want to appear, it's fine.

11 Good morning -- good afternoon.

12 MR. DUEWALL: Good afternoon, Your Honor. Craig
13 Duewall with Greenberg Traurig on behalf of BP. I'm joined
14 this afternoon by Nicole Bakare and Jared Weir, and I think
15 also online I see Mr. John Hutton has joined us remotely,
16 also from Greenberg Traurig

17 THE COURT: Thank you, sir.

18 MR. GENENDER: Good afternoon, Your Honor. Paul
19 Genender, Weil, Gotshal, and Manges. I'm joined by my
20 partner Alfredo Perez, Cliff Carlson, Kevin Simmons, and I
21 believe online is Ms. Choi, Erin Choi.

22 Thank you, Judge.

23 THE COURT: Thank you.

24 Is there anyone that wishes to appear on the phone
25 or on video that hasn't yet appeared?

1 (No audible response.)

2 THE COURT: All right. Let me get my camera
3 turned on.

4 All right. Mr. Duewall.

5 Oh hold on, I've got Mr. Manns wants to appear.

6 Mr. Manns for Shell, go ahead, please.

7 MR. MANNS: Thank you, Your Honor. Ryan Manns on
8 behalf of Norton Rose Fulbright, Shell Offshore.

9 THE COURT: Good afternoon. I don't -- is your
10 camera on Mr. Manns?

11 MR. MANNS: Your Honor, I (indiscernible) right
12 now and we're trying to rectify it, (indiscernible) I don't
13 want to (indiscernible).

14 THE COURT: Do you want me to wait a minute and
15 let you get that squared away, or do you want us to proceed
16 while you're working on it?

17 MR. MANNS: Oh. Please continue (indiscernible),
18 thank you.

19 THE COURT: Usually the problem is that somebody
20 has been on Zoom or another video program and that's still
21 open and has your camera captured and you have to get
22 completely out of any other program to use it here, but I
23 don't know if that's your problem or not, because that's a
24 -- the total of my technical advice today. You might want
25 to think about that.

1 MR. MANNS: Thank you, Your Honor.

2 (indiscernible).

3 THE COURT: All right. Mr. Duewall.

4 MR. DUEWALL: Thank you, Your Honor.

5 We are here today on BP's motion to amend or alter
6 the Court's May 24th Order where the Court granted
7 QuarterNorth's request to conduct 2004 discovery. So we're
8 here to respectfully ask the Court to alter, amend, revisit
9 that determination.

10 The May 24th Order, Your Honor, is Docket No. 2475
11 and our motion is found at 2487.

12 Just as a housekeeping matter, before we get
13 started, we have filed evidence for the hearing today that I
14 might refer to, and we would move to admit BP, our movant,
15 2488 along with 2488-1 through 2488-10, we have filed those
16 materials under seal.

17 And we would also move to admit 2496-5 to 2496-8,
18 which have not been filed under seal.

19 (Plaintiff's Exhibits 2488, 2488-1 through 2488-10, and
20 2496-5 through 2496-8 are offered into evidence.)

21 And then I also know that Mr. Genender and his clients
22 have evidence that they would like to admit, and we don't
23 have any objections to what they attached and wish to admit
24 today.

25 THE COURT: All right. Any objection 2488-1 to 10

1 or 2496-5 to 8?

2 MR. GENENDER: Yes, Your Honor. Paul Genender for
3 I'm going to say for QuarterNorth.

4 We do object, Your Honor, to those exhibits that
5 are from the arbitration proceeding as under our contract --
6 excuse me -- under our contract with BP, the actual
7 arbitration provision in the agreement at issue specifically
8 says that those documents are inadmissible in any other
9 proceeding. And I'm happy to put that up on the screen,
10 Your Honor. I think that should be --

11 THE COURT: So which documents are those?

12 MR. GENENDER: I'm looking at the ECF numbers to
13 note, it would be notice of intention to arbitrate and
14 supporting exhibits.

15 THE COURT: Do you have a number though?

16 MR. GENENDER: Do you have -- I don't have your
17 list with numbers on it actually.

18 MR. DUEWALL: Sure. What we have filed under
19 seal, Your Honor, is 2488 as well, as 2488-1 through 2488-
20 10.

21 THE COURT: Yeah.

22 And are you objecting to 100 percent of those?

23 MR. GENENDER: Yes. For that reason, Your Honor.

24 THE COURT: Okay. All right. And what about to
25 2496-5 to -8?

1 MR. GENENDER: Which ones are those?

2 MR. DUEWALL: Those are the 2496-5 through --

3 MR. GENENDER: Those hearing transcripts?

4 MR. DUEWALL: Yes.

5 MR. GENENDER: I don't have objections to hearing
6 transcripts, Your Honor, or the email so that -- August 24th
7 and I -- I don't have an objection to August 24th, 2021,
8 hearing transcript or the September 20th, 2021, email.

9 MR. DUEWALL: Also this, the entry of the
10 confirmation order.

11 MR. GENENDER: And I certainly don't have an
12 objection to the entry of the confirmation order, Your
13 Honor.

14 THE COURT: 2496-5 to -8 are admitted.

15 (Plaintiff's Exhibits 2495-5 through 2496-8 are
16 admitted into evidence.)

17 THE COURT: 2488 and 2488-1 to -10 can be offered
18 when you're ready to deal with his objection or you can try
19 and deal with that now, whatever one you wish to do,
20 Mr. Duewall.

21 MR. DUEWALL: Well, I have a brief response, Your
22 Honor, and I think -- I anticipated this objection and so
23 pursuant to the party's agreement, which is Exhibit F, and
24 that's found on the Record at 2488-1, I think it's page 44
25 of that exhibit. But specifically there's a confidentiality

1 provision and just, I can approach and just hand this to
2 Your Honor, because I know we have so many exhibits that
3 it's pretty burdensome, but --

4 THE COURT: Well, hold on a minute. I'll look at
5 it on Record.

6 MR. DUEWALL: Okay.

7 THE COURT: I don't think I'm broadcasting.

8 MR. DUEWALL: Page 144, Your Honor.

9 THE COURT: -- not broadcasting, hold on just
10 minute.

11 MR. DUEWALL: 2488-1, page 144.

12 THE COURT: 2488-1, page 1 --

13 MR. DUEWALL: 44.

14 THE COURT: Where's the confidentiality agreement
15 you want me to read?

16 MR. DUEWALL: It's there on Section E,
17 confidentiality. And it states:

18 "All documents, briefs, testimony, transcripts, as
19 well, as all arbitration decisions, shall be
20 confidential," period.

21 THE COURT: I'm not there with you yet.

22 MR. DUEWALL: Okay.

23 THE COURT: What page is this on?

24 MR. DUEWALL: I'm told --

25 THE COURT: Mine are labeled page 8 to -- it has

1 1404 pages are part of 2488-1.

2 MR. DUEWALL: Page 144.

3 MS. CHOI: I think that it's page 144 of Docket
4 2488-1.

5 THE COURT: Okay. Hold on. Page 144,
6 Confidentiality Agreement?

7 MR. DUEWALL: Correct, Your Honor.

8 THE COURT: Is this the agreement you're referring
9 to, Mr. Genender?

10 MR. GENENDER: I believe it's the Loop Agreement,
11 yes, Your Honor, it is.

12 THE COURT: It's called "Dispute Resolution
13 Procedure."

14 MR. GENENDER: Mr. Duewall is a gentleman, and he
15 is showing me it's exactly what I'm referring to, Your
16 Honor.

17 THE COURT: Okay.

18 MR. DUEWALL: You can keep that.

19 MR. GENENDER: Thank you.

20 MR. DUEWALL: And so in anticipation of this
21 objection, Your Honor, we can discuss this now and I think
22 the Court can rule now based upon the exhibit in front of
23 it. But there's two parts to that confidentiality provision
24 contained in Exhibit E. The first says that:

25 "All documents, briefs, testimonies, transcripts, as

1 well, as all arbitrary decisions shall be
2 confidential."

3 That's how we treated them. We've treated them as
4 confidential. It goes on to say:

5 "Likewise, the views, suggestions, admissions,
6 proposals, and other information exchanged in the
7 arbitration are confidential and are inadmissible in
8 any other proceeding."

9 What we've put before the Court's Your Honor are
10 documents, briefs, and those types of materials. We put
11 together the brief that they have filed in the arbitration
12 and all of its attachments. This language with regard to
13 views, suggestions, admissions, proposals, that's more akin
14 to 408-type information that wouldn't be admissible. But in
15 any event, it's not what we're moving to admit today. We're
16 admitting their arbitration demand, their arbitration
17 complaint, and then all of the exhibits that they attached.
18 And so we've -- there's really two filings, there's the BP
19 arbitration demand, which is arbitration number 1, and then
20 there's the QuarterNorth arbitration demand and all of its
21 attachments, which is merely a brief which is arbitration
22 number 2. Those are the two disputed items that they're
23 objecting to.

24 And because this falls under the documents,
25 briefs, that description, that's confidential, we've treated

1 as confidential, we filed under seal as confidential. But
2 the Court can certainly refer to it and admit it under seal,
3 because the Court's going to have to take a look at it to
4 determine the scope of what they're now trying to claim as
5 this evolving basis for the 2004, which is kind of from our
6 perspective been a moving target over time.

7 So pursuant to this express language, we think
8 that what we've attached and what we've moved to admit is
9 clearly admissible.

10 THE COURT: Mr. Genender.

11 MR. GENENDER: Thank you, Your Honor.

12 Two points. One is I submit it's improper to have
13 even filed it even under seal. Because by its very nature
14 it is a confidential proceeding.

15 Secondly, I agree with Mr. Duewall's reading of
16 those very words from a textual perspective, Your Honor.
17 And to be clear, the reason these documents were filed and
18 now being offered, goes directly to the truth and the
19 substance of what's happening in a private, contractually
20 based arbitration that BP itself filed a motion,
21 successfully, to get permission and relief from the
22 automatic stay to bring. And the views, suggestions,
23 admissions, proposals, other information exchanged in the
24 arbitration, that's exactly what those exhibits are.

25 THE COURT: So tell me -- he makes a distinction,

1 and he says the first sentence are confidential but not
2 necessarily inadmissible. In the second sentence is all
3 that is necessarily inadmissible. Are you telling me that
4 you agree with that distinction, but some of the documents
5 that he wishes to have admitted fall under the second
6 sentence? Or are you telling me that you disagree with his
7 distinction and what those two sentences mean?

8 MR. GENENDER: I do disagree with his distinction,
9 I think everything he's offered falls under the second
10 sentence, and I do think that those sentences should be read
11 together. And that there may well, be some overlap between
12 the sentences, but I think they're two independent
13 sentences. And the fact that the first sentence says
14 certain things are confidential and the second says
15 likewise, views, suggestions, admissions, proposals, and
16 other information exchanged in the arbitration are
17 confidential and are inadmissible in any other proceeding,
18 is designed to address this exact situation which is when
19 confidential arbitration pleadings are brought into court.

20 THE COURT: So let's take -- hold on just a
21 minute, I'll print that page.

22 Go through 1 through 10 and tell me which things
23 fall under the second sentence. And I do understand I'm not
24 sure if I agree with your argument that there may be
25 overlap, there may or there may not be, but at a minimum

1 you're going to have to show me something falls in the
2 second sentence in order to find that it is per se
3 inadmissible, I think.

4 MR. GENENDER: Your Honor, could I ask -- could I
5 impose on the Court to put their Exhibit List on the screen?

6 THE COURT: Their Exhibit List?

7 MR. GENENDER: Yes. That has them broken out,
8 because I'm looking at one that doesn't have the ECF numbers
9 on it.

10 THE COURT: I'm looking.

11 MR. GENENDER: I think their Exhibit List is 2496,
12 I believe.

13 dOkay. Thank you.

14 So our note -- BP's notice of intention to
15 arbitrate and supporting exhibits, which is listed as B on
16 there and that is what I'm looking at. I believe that's 240
17 -- 2488 1 through 4. That is absolutely -- well, of course
18 it's confidential, but it's also information exchanged, and
19 it contains. If it doesn't contain views, suggestions, and
20 admissions between the parties and it's exchanged in the
21 arbitration, so I would say that certainly while it may be
22 covered by both the first and the second sentence.

23 THE COURT: What do you believe is covered by the
24 second sentence -- excuse me, what do you believe the first
25 sentence means that it's not totally incorporated in the

1 second sentence? Because I think under your interpretation
2 we don't need the first sentence at all.

3 MR. GENENDER: I understand, I understand the
4 Court's point, Your Honor, but I think that the -- I think
5 there -- like testimony in the first sentence could also
6 mean admissions in the second sentence by way of example,
7 right? The discovery responses could be covered in the
8 second sentence but isn't necessarily unless it's a document
9 in the first sentence.

10 So I think that the purpose of the first sentence
11 is to describe the confidentiality and the second says, yes,
12 notwithstanding that, this set of information whether it's
13 the same or not, is also inadmissible in a court proceeding.
14 Even if it were duplicative it's still making a different
15 point in that it's saying one goes to admissibility and one
16 goes to confidentiality, albeit the second sentence goes to
17 confidentially and admissibility or inadmissibility.

18 THE COURT: But what -- when it says "all
19 documents," that seems to be pretty broad.

20 MR. GENENDER: As to confidentiality, no question,
21 Your Honor. And then --

22 THE COURT: And are you telling me that in the
23 second sentence there's something included that's not in the
24 first sentence, in the first sentence is there something
25 included that is not in the second sentence? Why do we have

1 two sentences?

2 MR. GENENDER: Obviously I cannot answer that
3 because I wasn't there -- I wasn't involved in the drafting.
4 But looking at it and knowing this --

5 THE COURT: I'm not talking about my friend
6 Genender, I'm talking about your client.

7 MR. GENENDER: Understood. Understood. Your
8 Honor, I think the best answer to that is that the second
9 sentence includes "other information exchanged" and these
10 are all these exhibits 2488 1 through 10 are -- constitute
11 information exchanged.

12 THE COURT: So we don't need sentence one.

13 MR. GENENDER: So for example --

14 THE COURT: I think you're going to have a hard
15 time convincing me in agreement that your two clients by any
16 measure are sophisticated clients agreed to do this -- you
17 can't give me an interpretation that says they wrote the
18 document badly. I've got to have something that says those
19 two sentences each have meaning.

20 MR. GENENDER: I think they do. I think one -- I
21 think the way to harmonize them --

22 THE COURT: Okay.

23 MR. GENENDER: -- and I sense the Court is going
24 to the --

25 THE COURT: It's easy to harmonize them by saying

1 they have the exact same meaning. So I need to know
2 something different in the two sentences.

3 MR. GENENDER: Absolutely.

4 THE COURT: Okay.

5 MR. GENENDER: Because you're going straight to
6 the rule of contract construction that the contract has to
7 be read in a way to give all the words as much meaning as
8 possible and not to give certain words no meaning and I
9 interpret you saying how, how, how -- or asking does my
10 interpretation of the second sentence render the first
11 sentence completely superfluous or meaningless?

12 THE COURT: Correct.

13 MR. GENENDER: And the answer is it does not. It
14 does not. The first goes to confidentiality, the second
15 goes to admissibility.

16 THE COURT: The second sentence says they're
17 confidential.

18 MR. GENENDER: It says they're confidential and
19 are inadmissible.

20 THE COURT: Right. Yeah. So I don't need the
21 first sentence at all.

22 MR. GENENDER: Well, the second sentence -- the
23 second sentence also includes things that are not in the
24 first sentence, like proposals.

25 THE COURT: Fine. But if the second sentence

1 totally encompasses the first sentence, why do I need the
2 first sentence?

3 MR. GENENDER: It doesn't, Your Honor, because it
4 doesn't -- the second sentence doesn't include briefs or
5 testimony --

6 THE COURT: Wait, briefs are exchanged.

7 MR. GENENDER: Okay. Testimony is not necessarily
8 exchanged, it's given. It's provided in a proceeding.

9 THE COURT: Okay.

10 MR. GENENDER: Transcripts are not exchanged, they
11 are created in a proceeding. An arbitrator decision is
12 given rather than exchanged and then it goes on to that and
13 says in addition to these what I would call kind of standard
14 pleading type documents in addition to those, anything else
15 that's exchanged. Other information exchanged. Purpose
16 being, Your Honor --

17 THE COURT: So you think that briefs, testimony,
18 transcripts, and arbitrator decisions are confidential, but
19 not inadmissible?

20 MR. GENENDER: No. I'm not saying that. I'm
21 saying -- I'm not saying that. I'm saying they are clearly
22 confidential. The second sentence goes on to say, "Likewise
23 views, suggestions, admissions, and other information
24 exchanged in the arbitration are both confidential and
25 inadmissible."

1 THE COURT: Let's take testimony. Are you saying
2 testimony is admissible?

3 MR. GENENDER: Is admissible?

4 THE COURT: Yes, sir. Or is not inadmissible is
5 probably the better way to put it.

6 MR. GENENDER: I don't think it's rendered
7 inadmissible, I think there's a -- I don't think it's
8 rendered inadmissible by this sentence, Your Honor.

9 THE COURT: So testimony is not inadmissible,
10 transcripts --

11 MR. GENENDER: By this sentence, there might be
12 another reason it's --

13 THE COURT: No.

14 MR. GENENDER: -- relevance or otherwise.

15 THE COURT: That's right. Transcripts are not
16 inadmissible under the second sentence, documents and briefs
17 might or might not be. And arbitrator decisions are not
18 inadmissible under the second sentence, right?

19 MR. GENENDER: Perhaps.

20 THE COURT: Well, they're not inadmissible under
21 the second sentence, they may be inadmissible --

22 MR. GENENDER: But, but, under -- they may not
23 inadmissible under other information exchanged. The views,
24 suggestions, admissions, I mean, those could all be
25 included.

1 THE COURT: Well, no. Testimony as you said isn't
2 exchanged.

3 MR. GENENDER: No, but testimony can be an
4 admission, certainly.

5 THE COURT: It could be an admission, but it isn't
6 exchanged.

7 MR. GENENDER: Understood. Understood. It could
8 be an admission and therefore inadmissible under the second
9 sentence. And --

10 THE COURT: You're saying an admission under the
11 second sentence is inadmissible even if not exchanged.
12 Because it says "and other information exchanged," meaning
13 that one would think that has to the exchanged to be
14 inadmissible.

15 MR. GENENDER: I don't read "exchanged" -- well, I
16 guess you're supposing that exchange modifies views
17 suggestions --

18 THE COURT: I'm asking, but there's an argument
19 for that.

20 MR. GENENDER: Understood. Understood. Your
21 Honor, I think that one of the things is -- I do think this
22 is a situation when the totality -- and I understand we're
23 talking about an evidentiary ruling, the effect of which,
24 given that it's been filed under seal, that you would -- in
25 effect the Court would see it and the public would not. I

1 understand that. And that offers some layer of protection
2 for the confidentiality I get that.

3 However, I also think that the very purpose for
4 which the information is being shared with you, is improper
5 because it goes to a confidential arbitration involving --
6 and I don't want to get too far ahead, involving agreements
7 that are not at issue in the 2004 discovery and involving a
8 party, Shell, that is absolutely not involved in the
9 arbitration.

10 THE COURT: I don't know how I decide that until I
11 see what it says, so.

12 MR. GENENDER: Until you see what the documents
13 say? Well, I think -- I think it's -- I think one way to do
14 it, Your Honor, is the PSA, which is not one of the arbitral
15 agreements here, is -- the arbitral agreements are the Loop
16 Agreement, I'm using vernacular, Loop Agreement and
17 production handling agreement, PHA.

18 The PSA which we submit the Rule 2004 is directed
19 towards whether there was a fraudulent inducement to enter
20 that by BP that we want to investigate that. And then, as
21 to Shell, whether Shell conspired with BP to effectuate that
22 fraudulent inducement and/or tortiously interfered with that
23 contract itself. It's without dispute that that agreement
24 has no arbitration clause and isn't mentioned in BP's so
25 called emergency motion.

1 THE COURT: Right. I'm going to admit them all.
2 Federal -- the purpose of the Federal Rules of Evidence is
3 to get to the truth of the matter. These documents are
4 designed to get to the truth of the matter.

5 Paragraph E is written and is sufficiently
6 incomprehensible way that I decline to enforce it in
7 contravention of the purpose of the Federal Rules of
8 Evidence. Moreover, the question is whether they are
9 admissible under the Federal Rules, nothing about a private
10 agreement keeps something inadmissible, makes it
11 inadmissible. It may mean that somebody has breached an
12 agreement and would be liable for the breach. I'm not
13 finding one way or the other whether Mr. Duewall's client is
14 breaching the agreement by offering these.

15 I'm only finding they are, in fact, admissible
16 both parties agree and I think there is no reading of
17 paragraph E that the documents shouldn't be maintained in
18 confidence.

19 I will keep them all under seal, but they are
20 admissible without a finding as to whether it was a breach
21 to have offered them, but I'm not enforcing that today over
22 what appears to be a paragraph that the lawyers in this
23 courtroom would not have drafted.

24 MR. GENENDER: Thank you, Judge.

25 And you addressed my one comment which is not

1 withstanding your ruling or included in your ruling is the
2 strict confidentiality of the documents.

3 THE COURT: They are all going to be kept under
4 seal.

5 MR. GENENDER: Thank you, Judge.

6 THE COURT: Mr. Duewall, so they're all admitted.

7 MR. DUEWALL: Thank you, Your Honor.

8 And just so that Mr. Genender doesn't fail to
9 present his later, we have no objection to the evidence or
10 exhibits that Mr. Genender is going to offer later. He can
11 do that now or when he makes his presentation.

12 THE COURT: Let's go ahead and do that now. Just
13 so we get the Record clean.

14 Now you are offering, Mr. Genender, which of
15 yours? Are you offering everything in 2500?

16 MR. GENENDER: Yes.

17 THE COURT: 2500-1 through -6 are admitted,
18 anything else?

19 (Exhibits 2500-1 through -6 received in evidence.)

20 MR. GENENDER: Thank you.

21 THE COURT: 2501 are you offering that as well?

22 (No audible response.)

23 THE COURT: Are you offering 2501 as well?

24 MR. GENENDER: Yes. I am.

25 THE COURT: Okay.

1 MR. GENENDER: 2501 was previously admitted, it's
2 previously been sealed, it's the PSA, Your Honor, yes, I am.

3 THE COURT: All right. We're admitting 2500-1 to
4 -6 and we're admitting 2501. I'm going to maintain for the
5 purpose of this hearing so we can have it, all of the
6 documents either side is offering under seal for now.

7 MR. GENENDER: Thank you. Thank you.

8 THE COURT: All right.

9 Go ahead, please, Mr. Duewall.

10 MR. DUEWALL: Thank you, Your Honor.

11 Just as background so that -- there's been a lot
12 of time that transpired since we've been in front of the
13 Court talking about 2004 and arbitration issues, but just
14 and quick summary of what brings us here again today, Your
15 Honor, is that now this is a discovery dispute over 2004
16 discovery requests that date back to May of 2021 and
17 Fieldwood, now QuarterNorth, attempted to remove BP as
18 operator on the same day back in May of 2021 that they
19 originally served us these 2004 requests. The parties moved
20 forward with the contested confirmation hearing in June of
21 2021.

22 On July 25th of 2021 the confirmation order was
23 entered and then that also correlated, Your Honor, in July
24 of 2021 we had the hearing on BP's request to send the
25 operator dispute -- because that was the only dispute we had

1 at the time -- to arbitration.

2 And then on August 24th, 2021, the Court granted
3 our motion compelling arbitration and at that time declined
4 to allow the 2004 discovery, specifically, you know, on the
5 Record on that date and I'm referring to the Court's Record
6 Document 2496-7 and on pages 10 and 11, I'll just summarize.
7 The Court stated that they understood, that you understood
8 QuarterNorth's position that they had taken, but that the
9 Court didn't think that they had supported it with the
10 request that they made in light of what the PSA says in
11 terms of the waivers. And we'll get to remind the Court
12 about that in a moment.

13 But there are comprehensive, extensive waivers in
14 this PSA over alleged disclaiming representations of all
15 kinds and disclaiming damages, consequential damages. So
16 the Court had taken a look at the waivers, and went on to
17 say, "I get it that if you want to file a motion to
18 reconsider this, I'm not going to be offended by that,"
19 which they certainly did and we'll get to that in a moment.

20 But as the Court noted -- you know, if you look at
21 the PSA itself, I'm not sure what damages you're actually
22 seeking to prove up by doing the discovery. If this is
23 largely under the PSA and the Court commented that it's more
24 likely to be discovery that's related to the termination
25 dispute. Because at that time that was the only dispute

1 that had really materialized and had come into focus between
2 the parties was this termination dispute.

3 We now have two arbitrations, one is informally
4 referred to, I think, as the termination or operatorship
5 issues that's in number one. Number two, the arbitration
6 that they initiated is more of a kitchen sink type
7 arbitration and we'll kind of get to that in a moment where
8 they make broad claims and allegations and I'm going to do
9 my best not to talk about it too specifically. But that was
10 the distinction that was being made then when the Court
11 originally had entered into its determination and then
12 half-way down page 11 on 2496-7, the Court affirmed that for
13 now I think the discovery in large part is going to the
14 termination question.

15 And so QuarterNorth/Fieldwood accepted the Court's
16 invitation to offer and explain then in September of 2021
17 why they thought they were entitled to the discovery and
18 what this unique dispute, at least in their mind in terms of
19 their allegations, concerned. And this I think is important
20 because it marks kind of the marker if you will in September
21 of 2021 post-confirmation where they finally start beginning
22 to elaborate and tell us what this dispute might be.

23 And so in document 2051, they are largely for the
24 first time explaining to us that what the requests concern.
25 And I'm summarizing specifically in document 2051. It's

1 they're pleading, but it's paragraph 6, 7, and then again in
2 paragraph 12. Where in paragraph 6 they take each of their
3 discovery requests and they tell us what it's pertaining to.
4 Again, trying to define them in a way that doesn't include
5 the operatorship as something else. Trying to convince the
6 Court that this is outside of operatorship.

7 And they talk about in terms of -- I paragraph 6
8 Genevasa (phonetic) generally conduct at Nakika (phonetic).
9 There's only one request where they specifically, I think,
10 mention the PSA and that's request number three. All of the
11 other 17, I believe, relate to other issues, other disputes
12 that are occurring between the parties.

13 And then in paragraph 12, they give us a little
14 bit more insight as to what they claim or how they claim we
15 may have violated the PSA, but that violation, that alleged
16 fraud relates to breaches of the PHA and the Loop Agreement.
17 So if you're looking at paragraph 12 of 2051, they say, "BP
18 expressly represented," this is their allegation --
19 "expressly represented the PSA that it had the power and
20 authority to comply with it's obligations under the PSA, as
21 well, as the PHA, and the Loop Agreement."

22 These other agreements, which as Mr. Genender said
23 a moment ago, are all subject to this arbitration number
24 two. We committed fraud allegedly by not honoring the
25 agreements that are the subject of the arbitration. And so

1 for the first time, post-confirmation, they're trying to
2 define this in a way that's outside of the operatorship
3 dispute, but in doing so, they haven't -- they've admitted
4 then and they continue to admit that this really concerns,
5 allegations concern the PHA and the Loop Agreement.

6 Outside of this PSA agreement, which admittedly
7 isn't -- doesn't contain the PSA -- doesn't contain the
8 arbitration agreements. They're trying to hang their hat on
9 -- it's just a PSA, a straight PSA, straight PSA agreement.

10 But over the course of the last year, Your Honor,
11 these parties have been in disputes, arbitration number one
12 and arbitration number two, that concern the very requests,
13 the very types of information that they claim they're
14 seeking to now investigate, with this 2004.

15 So it's -- how they refer to the 2004 is kind of a
16 moving target, if you will. They're going to define it in a
17 way that gets outside of the operatorship dispute, but when
18 they do that they kind of pigeon hole themselves into the
19 Production Handling Agreement and the Loop Agreement and now
20 that they've initiated the arbitration number two, they want
21 to try to pivot back out of those agreements into the PHA.

22 But in terms of the Record on September 2nd, we
23 initiated arbitration number one and then a month later on
24 October 1st, they initiated arbitration number two. The
25 arbitration number one, that's what the Court has admitted

1 at 2488 and 2488-1 to 2488-4, and then their arbitration
2 complaint, what I refer to -- not derogatorily -- not trying
3 to be derogative it's more of a kitchen sink, every claim
4 under the sun arbitration is this arbitration number two
5 that the Court can find at 2488-5, 2488-5 through -8.
6 2488-5 through -8. So that's where those arbitration
7 agreements are found in the Record.

8 So for the past eight or nine months, these
9 disputes have been moving forward and without getting into
10 the weeds, the details too much in the arbitrations, the
11 parties will eventually begin to conduct discovery in the
12 arbitrations. They'll have the opportunity to conduct the
13 discovery, the same or similar discovery that their trying
14 to seek here in terms of request for production of documents
15 and the like.

16 THE COURT: So I do understand how the Order I
17 issued could allow a lawyer to frame arbitration discovery
18 better in a manner that may be adverse to your client. So
19 -- but beyond that and that may be no small thing. But
20 other than affecting the arbitration by allowing them to
21 better craft arbitration discovery, does my Order do
22 anything that interferes with either of the two
23 arbitrations?

24 Because I've said it's limited to confidential
25 eyes only. So you can't take the documents and then offer

1 them in the arbitration, right? That would be barred by my
2 Order. You could maybe frame a question that you know,
3 zeroes in on, you know, give me all the emails between these
4 two people on this date, and you know, they're going to get
5 the email they want. So I got that, but that seems like a
6 pretty minor intrusion.

7 Are there some major intrusions that I need to
8 worry about?

9 MR. DUEWALL: I think in terms of -- well, in each
10 arbitration, the arbitrator is designated to call balls and
11 strikes with regard to discovery disputes and objections
12 that the parties have.

13 THE COURT: And do I interfere with their ability
14 to call balls and strikes if I limited whatever I'm ordering
15 turned over to professional eyes only use?

16 MR. DUEWALL: I think you are interfering with
17 their ability to call balls and strikes if you allow
18 questions that seep into the subject matter and disputes
19 that are being litigated in the arbitration. Because
20 they're going to be getting it -- they're going to be
21 getting the opportunity to serve two sets of discovery.
22 Because if it says broad as what you've allowed here and
23 beyond the scope of PSA --

24 THE COURT: Let's assume I give them something
25 that is useful in the arbitration, but not useable because

1 I've barred it. How have I gotten in the way of what the
2 arbitrator is supposed to do?

3 MR. DUEWALL: I think if you've allowed them to
4 ask a narrowly tailored question that is outside of the
5 purview of the parties' dispute in the arbitration. For
6 example if they had a request that was limited only to the
7 PSA, the Purchase Sale Agreement, that would be one thing.
8 But if they have now -- but what we have instead are 17
9 requests that allow you to --

10 THE COURT: Let me assume they get something that
11 they would really like to use in the arbitration, I'm not
12 permitting them to use it, that's still up the arbitrator
13 and they can't use it having gotten it solely out of the
14 discovery that I would authorize because I said
15 confidential, professional eyes only. So they would have to
16 frame a new discovery request that the arbitrator would
17 approve in order to be able to use it, right?

18 MR. DUEWALL: That's right. That's right.

19 THE COURT: How does that interfere with what the
20 arbitrator can do?

21 MR. DUEWALL: Well, it interferes with -- well, it
22 interferes with the scope of the discovery that the parties
23 are allowed to conduct in the arbitration --

24 THE COURT: How? How?

25 MR. DUEWALL: Because they get additional requests

1 for production --

2 THE COURT: For stuff they can't use.

3 MR. DUEWALL: Well, I think -- I respectfully
4 disagree with the premise that once they see it, they're not
5 going to be able to use it in someway. They're going to
6 know how to -- they're going to know how to frame a
7 request --

8 THE COURT: I said, I understand they will be able
9 to do that, but then you can go to the arbitrator and say
10 they shouldn't be allowed to frame that request for these
11 reasons, right? So how have I interfered -- I understand it
12 may actually hurt your client to do it this way and you
13 wouldn't be here if you didn't think it was in your client's
14 interest to have me change my mind. And that's all fine.

15 I'm trying to figure out though am I actually
16 interfering with the arbitrators' authority because you
17 would be able to got to arbitrator and say they should not
18 be allowed to get discovery for this reason and their answer
19 isn't going to allow to be, but see this is the document
20 we're going to get, right?

21 MR. DUEWALL: I think that as long -- yes, but I
22 do think that once the cat is out of the bag it's, you can't
23 un-ring the bell in some respects once they see it --

24 THE COURT: You can't un-ring knowledge, but I can
25 un-ring use, right?

1 MR. DUEWALL: Well, I think knowledge is what's
2 important in terms of where they're headed, number one, and
3 then number two I do think that it's important that if the
4 parties have agreed that we're going to get X number of
5 requests in a dispute, that to the extent that this Court is
6 allowing them to conduct additional discovery that's related
7 to or encompassed in those disputes, I think that, that goes
8 against -- I think that's in -- potentially in violation of
9 the parties' agreement. Because they have a limited scope
10 of discovery that they're permitted to conduct. Now the
11 parties are free to allow for more.

12 THE COURT: Look, their argument is we're trying
13 to really do discovery on the PSA. If it isn't relevant to
14 the PSA, we shouldn't get it. But if it's relevant to the
15 PSA and also happens to be relevant to the arbitration, you
16 can't stop us from getting it if it relates to the PSA even
17 if it also relates to the arbitration, that's their
18 argument.

19 And I need to protect that arbitrators'
20 contractual responsibilities because you-all have contracted
21 to have an arbitrator do that, but it doesn't seem to me
22 that by giving them material that in the absence of an
23 arbitration would be discoverable in the PSA side and
24 prohibiting them from using it in the arbitration -- other
25 than they'll have knowledge. That's important. That's why

1 I tried to draw the line -- that's why I tried to draw the
2 line there and I may not have been clear enough in that line
3 drawing by saying it's confidential professional eyes only
4 to say you can't use this as an exhibit in a motion before
5 the arbitrator. But I can't say, you can't remember this
6 when you're framing stuff.

7 MR. DUEWALL: Right. I can appreciate the Court
8 wanting to try to navigate that difficult issue, but I think
9 the Court also -- I think there's a threshold issue, too, as
10 to whether or not the request on its face is related to the
11 PSA, because it's --

12 THE COURT: SO if it isn't related and is not
13 likely to result in discoverable information. In other
14 words, it's not discoverable in PSA disputes, then yeah, I
15 shouldn't allow it. And so have I done something that -- if
16 there's something that I've allowed that isn't related to
17 the PSA, I don't know why they're entitled to it.

18 MR. DUEWALL: That's right, Your Honor. And
19 that's where I was headed next, which is Exhibit D to our
20 motion, this is found at 2488-10 of the Court's Record and
21 typically I would have done something like this maybe as a
22 PowerPoint, but I didn't want to publish it in open court.

23 But what we have done is we've taken each of their
24 discovery requests and we've mirrored them up and tied them
25 up with not only the allegations that they're making in

1 their arbitration, this isn't the BP arbitration, which is
2 number one, this is the number two arbitration.

3 THE COURT: I'm worried about the PSA I think.
4 Right?

5 MR. DUEWALL: Exactly.

6 THE COURT: So if they're not related to the PSA,
7 I want them to tell me why I should give it to them.

8 MR. DUEWALL: Exactly.

9 THE COURT: But if they are related to the PSA I
10 want you to tell me why they shouldn't get it just because
11 the arbitrations.

12 MR. DUEWALL: I understand. Well, I don't think
13 -- the only one that relates to the PSA is number three.

14 THE COURT: So you think one does not relate to
15 the PSA at all?

16 MR. DUEWALL: Correct.

17 THE COURT: So I think the burden is on them to
18 demonstrate that it is either obviously relevant or might
19 lead to the discovery of a relevant information related to
20 the PSA, especially given their objection they filed
21 yesterday.

22 MR. DUEWALL: I think that's exactly right, Your
23 Honor. And in their response to our motion seeking
24 reconsideration (indiscernible), they did not respond to the
25 points that we raised here. So they haven't gone -- and

1 respectfully they have not gone and done the "See Spot run"
2 analysis of number one is a PSA --

3 THE COURT: Let me ask Mr. Genender if he agrees
4 that they would have to, under the response he filed
5 yesterday, demonstrate discoverable or might lead to
6 discoverable information as to each request related to the
7 PSA?

8 Do you think that's something I should hold you to
9 do?

10 MR. GENENDER: I think we've already done it.

11 THE COURT: Whether you've done it or not --

12 MR. GENENDER: Okay. Okay.

13 THE COURT: -- can I hold you to do that?

14 MR. GENENDER: That's kind of like asking me to
15 switch chairs with you a little bit, but --

16 THE COURT: Seems pretty fair, doesn't it?

17 MR. GENENDER: To ask me to do it?

18 THE COURT: Yeah.

19 MR. GENENDER: Well, that's -- I'm happy to do it.

20 THE COURT: Okay.

21 MR. GENENDER: I mean, I --

22 THE COURT: If it's not related to the PSA dispute
23 or likely to lead to discoverable information in the PSA
24 dispute, do you agree that it's something I should not
25 allow?

1 MR. GENENDER: Unless it's related solely to
2 Shell, because that's a different issue. Because Shell's
3 not a party to those other cases.

4 THE COURT: So what?

5 MR. GENENDER: Well, but we have the right to --
6 well, we have the right to investigate claims against BP for
7 fraudulent inducement to enter the PSA and against Shell to
8 investigate claims for conspiring with BP to fraudulently
9 induce us, or interfering with that agreement thereafter --

10 THE COURT: But all of that is part of the PSA
11 dispute.

12 MR. GENENDER: Understood. So I think the answer
13 -- I'm going to say generally speaking, but it might be
14 absolutely, but at least generally speaking the answer to
15 your question is "yes."

16 THE COURT: Then why don't I have you do that?
17 Why don't I have you take his chart and explain to me in
18 your own contra-chart that I'll give you whatever you want,
19 you know, a week or so to submit relevance?

20 MR. GENENDER: That's I'm happy -- I'm certainly
21 willing to do that. I hate to say I'm happy to do it, but
22 I'm certainly willing to do it, because I'm not -- because
23 I'm -- you know, I'm going to be candid with you I don't
24 think it's an unfair request, I'm not saying it's an unfair
25 request, if I thought it was an unfair request --

1 THE COURT: And you're not going to do the work
2 anyway, right? Ms. Choi's going to do the work.

3 (Laughter.)

4 MR. GENENDER: Well, Judge, first of all, if I'm
5 smart, I'm going to have Ms. Choi and Mr. Simmons do a lot
6 of the work, because then you'd expect nothing less.

7 But Judge, I do want to make -- in all seriousness
8 all of that was tinged with quite a bit of seriousness. I
9 want to speak to something Mr. Duewall said about this
10 moving target.

11 THE COURT: Okay.

12 MR. GENENDER: I'm not responding --

13 THE COURT: Because I interrupted him to find out
14 about this question.

15 MR. GENENDER: Okay.

16 THE COURT: I'm not going to -- I actually don't
17 want to go back and forth on this.

18 MR. GENENDER: Okay.

19 THE COURT: I did make a decision. If -- and it's
20 pretty much along the lines I said, which is you're entitled
21 -- I meant to say you are entitled to information without
22 interfering with that arbitrators' decision, that's why I
23 put down the professional eyes only language.

24 When I looked back for today, I wasn't sure how
25 obvious that was to every body that, that's what I was

1 doing. That is what I intended to do is I need to protect
2 the arbitrators' ability to allow or not allow discovery in
3 the arbitration.

4 I can't protect against knowledge. If you get
5 information that is relevant to the PSA and you can use that
6 knowledge to better frame something before the arbitrator,
7 those are just the breaks of the way litigation is going to
8 come down. But I shouldn't be giving you a document
9 unrelated to the PSA that you can use solely to frame things
10 and to go and do something before the arbitrator.

11 I think I need to rewrite my Order at a minimum to
12 make clear to the arbitrators -- and I do -- I've been
13 referring to that singularly -- that I'm not interfering
14 with their decision making as to what can be used over
15 there, nor am I authorizing anyone to use a document over
16 there unless the arbitrator approves of it.

17 So you can't attach something I give you to
18 something to him -- ever.

19 MR. GENENDER: Certainly. And I assume you're
20 referring to the last line, "All discovery responses will be
21 held in confidence on a professional eyes only, quote,
22 basis?"

23 THE COURT: Yeah.

24 MR. GENENDER: And Your Honor, I want to make sure
25 the converse isn't true, in that I want to make sure that

1 because what we're dealing with, Your Honor, are facts
2 whether between the two arbitrations or as it relates to the
3 PSA, facts that are relevant to multiple agreements and
4 multiple claims, which is common.

5 THE COURT: Correct, I'm not -- I'm not precluding
6 you from using anything in the arbitration that the
7 arbitrator permits.

8 MR. GENENDER: Understood.

9 THE COURT: But I'm not authorizing you to use
10 something in the arbitration because I gave you discovery on
11 it. That is up to the arbitrator.

12 MR. GENENDER: Yes. And if the Court's
13 inclination is to ask -- is to direct us to respond to the
14 chart, their Exhibit D chart I think it was, and then I
15 would of course like to have the opportunity to come back
16 and visit with the Court about it, if that were helpful to
17 the Court.

18 THE COURT: I don't know if I'll need that or not,
19 it depends on how good of a job you do.

20 MR. GENENDER: Okay. Yeah. Understood. Fair
21 enough.

22 I do want to point the Court to document 2019,
23 which was our motion to reconsider, and page 5 of that --
24 and this was on August 30th, 2021, because I do think that
25 that speaks to what Mr. Duewall was talking about as it

1 relates to the requests themselves.

2 He is mistaken when he says only number three
3 relates to the PSA. I think he overlooked certainly
4 number 13 refers specifically to the PSA but, but a request
5 seeking information about the PSA, Your Honor, as the Court
6 well, knows doesn't have to mention the PSA to be aimed at
7 seeking information about the PSA. And we can do that work
8 and show that to you.

9 THE COURT: It's the language in the rule, right?

10 MR. GENENDER: Yeah.

11 THE COURT: It's discoverable or it's likely to
12 lead to --

13 MR. GENENDER: Yes.

14 THE COURT: -- discoverable information, but I
15 need you to identify that on a request-by-request basis.

16 MR. GENENDER: Okay.

17 THE COURT: And in as much detail as you want.

18 MR. GENENDER: Understood, and the reason I wanted
19 to direct the Court -- and I won't go through it now unless
20 you wanted me to -- is we cited the Texas Supreme Court Case
21 *Buljarik* for the proposition for the, quote, "That while a
22 party's intent is determined at the time the party made the
23 representation, it can be inferred by things that happen
24 afterwards."

25 And I think that we'll do that work and lay it

1 forth as to why common facts can speak to different claims
2 under different agreements.

3 THE COURT: And I think that's consistent with the
4 way that I ruled. But I respect Mr. Duewall has prepared
5 this chart that tells me I may have erred on the side of
6 allowing too much discovery and I want you to respond to
7 that in writing so that I can correct an error, if I've made
8 one, and I intend to correct the last sentence to make it
9 more expansive so that the arbitrators' range of motion is
10 fully protected -- ranges of motion are fully protected.

11 MR. GENENDER: Understood, Your Honor. And I, by
12 way of preview, when we do the work that you're directing us
13 to do, I think you're going to find that if not 100 percent,
14 then very, very substantial percentage is PSA only and then
15 overlap as to some.

16 THE COURT: That's fine.

17 MR. GENENDER: And we'll do the work.

18 THE COURT: How long do you need?

19 MR. GENENDER: What is today?

20 THE COURT: Today is the 7th.

21 MR. GENENDER: Could we have a week Friday?

22 THE COURT: You want until the 24th?

23 MR. DUEWALL: We don't object to more time if you-
24 all want --

25 MR. GENENDER: No, no, could we have a week from

1 this Friday so 10 days, is that okay?

2 THE COURT: You want until the 17th?

3 MR. GENENDER: Yeah. Is that okay?

4 THE COURT: How long do you want to file a reply,
5 Mr. Duewall?

6 MR. DUEWALL: Two weeks.

7 THE COURT: All right. 17th and the 1st, is that
8 what you-all want?

9 MR. GENENDER: I feel like I just got whipsawed,
10 but that's okay. Two weeks feels like a long time to
11 respond to something we're going to do when they already did
12 the work, but it's okay. That's fine.

13 THE COURT: Would you like until the 21st and I'll
14 leave him on the 1st? I don't care.

15 MR. GENENDER: You know, probably I know the 20th
16 is a holiday and yeah. Yeah. Probably, yeah.

17 THE COURT: Okay. You file your chart by the
18 21st, do you want until the 5th or do you want until the
19 1st, Mr. Duewall, I don't really care.

20 MR. DUEWALL: 5th is fine, Your Honor.

21 THE COURT: You've got until July 5th, we'll take
22 it under advisement on July 6th. I may need a further
23 hearing, I'm hoping I can resolve it on there.

24 I will grant the motion for reconsideration to the
25 extent of clarifying the consequences of professional eyes

1 only and the absence of attempting to interfere with the
2 arbitrator in any way, but I'll also clarify that I'm not
3 restricting you from using information you gain because
4 information is valuable and you can use it, you just can't
5 publish the documents in any way.

6 MR. GENENDER: And that's the limit to which
7 you're granting consideration is to clarify that last
8 sentence?

9 THE COURT: Well, I'm granting that now, --

10 MR. GENENDER: Yes.

11 THE COURT: -- but I may in addition say that you
12 don't -- they don't have to turn anything over because
13 certain of the requests, as Mr. Duewall points out, may
14 exceed any relevance towards the PSA.

15 MR. GENENDER: And Your Honor, I hope this doesn't
16 surprise you that I'm going to say this, we don't intend to
17 take any action in terms of serving the request in response
18 to your Order until we --

19 THE COURT: I know you won't do that.

20 MR. GENENDER: -- until this is resolved.

21 THE COURT: I know you won't.

22 MR. GENENDER: I know you know that, but I wanted
23 to say it.

24 THE COURT: Okay. Thank you.

25 MR. GENENDER: Okay.

1 THE COURT: Mr. Duewall, I cut you off a little
2 bit, but I think if you want to say more, go ahead, but that
3 chart's going to matter a lot to me.

4 MR. DUEWALL: Thank you, Your Honor.

5 No. I'm good enough to know that I should
6 probably stop while I'm ahead and I respect the Court's
7 decision. I appreciate that, because I think the chart is
8 important, we'll take a look at what we get back from
9 Mr. Genender.

10 We did have one question -- another question with
11 regard to the Court's Order and as it related to
12 professional eyes only. That's limited to the lawyers,
13 correct? Is it the Court's intent that that be lawyers eyes
14 only or does that extend to experts or I just didn't
15 understand.

16 THE COURT: I meant lawyers and experts, not the
17 clients. I really don't want this stuff going to the
18 clients on the grounds that they have ongoing business
19 relationships and they need to be able to maintain those
20 without worrying that, for example, if you and Shell have
21 some confidential document that QuarterNorth will suddenly
22 get it and you know, be able to use it in its business
23 operations.

24 So it's professional eyes only, but that includes
25 more than just lawyers.

1 MR. DUEWALL: Okay.

2 THE COURT: And if you-all want to work on that
3 language and submit that jointly, for what -- to define all
4 that, how to protect the arbitrators' range of motion. If
5 you-all have language you want to agree to that, instead of
6 me drafting it, I'm perfectly okay with that, if you-all get
7 the point?

8 MR. GENENDER: I think my preference would be that
9 if we can agree on it, we submit it. If we can't agree on
10 it, we do nothing and let you decide.

11 THE COURT: That sounds great to me.

12 MR. GENENDER: If that's okay with you.

13 THE COURT: That sounds great to me.

14 Mr. Manns, are you okay with where we're going on
15 this?

16 MR. DUEWALL: And I have one other statement to
17 make, I think Mr. Manns, might be muted, I couldn't hear
18 him, but --

19 THE COURT: Okay. Let me try that again.

20 MR. DUEWALL: In our response --

21 THE COURT: Hold on, hold on. Let me let
22 Mr. Manns, go ahead, please.

23 MR. DUEWALL: Oh, sorry.

24 MR. MANNs: Thank you, Your Honor.

25 And I don't object on issues. We're in a strange

1 spot. (Indiscernible) arbitration, (indiscernible) are not
2 a party to -- Your Honor, (indiscernible) everyone to --

3 THE COURT: Mr. Manns, I'm losing about every
4 third word, maybe pick that up.

5 MR. MANNS: Sorry. Can you hear me better, Your
6 Honor?

7 THE COURT: That does seem better, thank you.

8 MR. MANNS: Thank you.

9 Your Honor, we're obviously in some strange spot.
10 You know, we're not involved in the bidding arbitration.
11 With that said, the request for production that are being
12 propounded are in large part identical.

13 If Your Honor in any way limits (indiscernible)
14 and property rights in connection with (indiscernible) BP,
15 it can then circumvent the Court's (indiscernible) similar
16 discoverable information from Shell.

17 And so (indiscernible), I think what the Court has
18 described here today will help to at least frame up the
19 discussion.

20 THE COURT: Thank you, Mr. Manns. If you want to
21 join in the reply that Mr. Duewall is going to file, I would
22 ask that you coordinate that with him and file it jointly,
23 would that work?

24 MR. MANNS: It would. Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Manns.

1 Mr. Duewall.

2 MR. DUEWALL: Your Honor, there was one last issue
3 and this is more housekeeping than anything else and it
4 really relates to whether or not the Court's Order is an
5 interlocutory discovery issue that's subject to Rule 59(e)
6 or 59(b) as it relates to when we have to potentially file
7 an appeal from the Order that you granted for their motion
8 to reconsider.

9 And so what I would respectfully request that the
10 Court do today to kind of take us out of that uncertainty
11 from our perspective and I don't want to leave here and --

12 THE COURT: Right. How do I do --

13 MR. DUEWALL: -- us have to file an appeal --

14 THE COURT: How do I do that?

15 MR. DUEWALL: -- and then you question the fire
16 drill that we create. What I would instead respectfully
17 request is that the Court fully vacate the Order to
18 reconsider without prejudice to the Court's right to
19 continue to address these issues that you recited on the
20 Record a moment ago.

21 And I say that just to -- so when we leave here
22 today that our -- I don't want to -- the Court to see an
23 appeal filed and say well, what is -- why do Duewall and his
24 group feel like they needed to do that? But we would
25 respectfully want to make sure that we don't miss any

1 important deadlines because of the uncertainty --

2 THE COURT: If I do a 59(d) Order, does that take
3 it out?

4 MR. DUEWALL: Yeah.

5 MR. GENENDER: Well, I think the question is
6 whether we're in the 59 world at all. I think there's an
7 argument that we're actually under 54 and I honestly, with
8 all due respect, if you were to say it was 59(e) and we did
9 eventually appeal you, I do not think the District Court
10 would be bound by your characterization of that.

11 THE COURT: Yeah. Well, I think it's 59(d) as in
12 David, which allows me to say I'm setting my own motion for
13 a new trial.

14 MR. GENENDER: Okay. I hadn't thought about that.

15 MR. DUEWALL: Are you all right?

16 MR. GENENDER: No. I'm just thinking.

17 THE COURT: Why don't we do this? It is my
18 intention to not to have appellate deadlines running against
19 anyone and I would ask the parties to jointly figure out how
20 to do that. I don't want to vacate my Order at this point.
21 But if there isn't any other way to do it, I may vacate it
22 and then reenter it with just that one paragraph change
23 knowing that I may have to change it again, once I get all
24 the briefing done. Hopefully you-all can find a way to do
25 this.

1 MR. DUEWALL: Could you do that now? Because I
2 think we're going to --

3 THE COURT: Could I do what now?

4 MR. DUEWALL: Go ahead and do that, vacate it now
5 and restart that clock so we can --

6 THE COURT: By issuing a new order?

7 MR. DUEWALL: -- because today's our 14th day
8 under the -- if it was a 59 -- if we're under the 59 --

9 THE COURT: Does that cause any injury to you?

10 MR. GENENDER: Well, excuse me. We told
11 Mr. Duewall that once he files a motion to reconsider, it's
12 our view that the appellate deadlines are stayed until it's
13 ruled upon. I don't have 59(d) in front of me, Your Honor,
14 but it seemed like it made sense, but we certainly do not
15 want the orders vacated, there's no grounds for vacating it
16 frankly --

17 THE COURT: I'm going to amend it.

18 MR. GENENDER: Understood. Understood. And as to
19 the last line I understand the --

20 THE COURT: Right. But if I amend it today, will
21 that then extend their deadline another 28 days?

22 MR. GENENDER: I think you're entering a new Order
23 at that point.

24 THE COURT: So it would.

25 MR. GENENDER: I think the answer -- I think the

1 answer to that is "yes."

2 THE COURT: Okay.

3 MR. GENENDER: Now but -- go ahead.

4 THE COURT: Can you-all do that right this
5 afternoon, submit a new Order that changes only that last
6 sentence to encompass the things that we've talked about --

7 MR. DUEWALL: And it just fully replaces the main
8 24th order?

9 THE COURT: -- and it will amend and restate the
10 original Order, fully replacing it.

11 MR. GENENDER: Yeah. We can do that, easy.

12 THE COURT: Okay. And then get that filed on an
13 emergency basis and contact Mr. Laws.

14 MR. GENENDER: Your Honor, with the Court's
15 permission, I would like to revisit some of the scheduling
16 we did, because I've given it some thought.

17 THE COURT: Yeah.

18 MR. GENENDER: And I hope I can do that by --

19 THE COURT: Look, I don't want to leave this.

20 MR. GENENDER: Okay.

21 THE COURT: I want you to send an email to Tyler
22 Laws, who is my courtroom deputy so he can put in my
23 emergency box so I can get it done before I go home tonight.
24 And you-all need to agree on what that new sentence ought to
25 be, and if you can't file a statement that you can't agree

1 on it and that I need to do my own language. But I will do
2 something before I go home.

3 MR. DUEWALL: Thank you, Your Honor.

4 Thank you, Mr. Laws.

5 MR. GENENDER: Your Honor, we can get the -- we
6 can get the response to the requests by this Friday and
7 would hope that they could respond to it shortly thereafter.
8 I just did a little bit more conferring on my end and I
9 don't think it will take that long.

10 And I guess the other piece -- the other question
11 I had as to where we needed up after our colloquy here is
12 Shell's -- I mean, Shell is differently situated than BP.
13 There's no arbitration agreements, there's -- all the
14 arguments BP is making -- this whole chart is premised on
15 the notion that BP has created this -- this narrative --

16 THE COURT: Yeah. I got it. No, but --

17 MR. GENENDER: But Shell's not a part of that
18 narrative. They don't have an arbitration agreement.

19 THE COURT: If it relates -- if it doesn't relate
20 in anyway to the PSA, why would you want discovery from
21 Shell?

22 MR. GENENDER: Well, but Your Honor, I think the
23 way to look at this is we have two agreements that have
24 arbitration clauses, the PHA and the Loop Agreement. If it
25 doesn't relate to them, then we should be allowed to get

1 2004 discovery -- not that it has to relate to the PSA. It
2 may not be a -- there may not be a massive difference in
3 what I'm saying, but the bar if they're trying to make a bar
4 because it's within an arbitration should be limited to
5 those two agreements --

6 THE COURT: We're post-confirmation.

7 MR. GENENDER: Well, understood, Your Honor, and
8 they didn't talk about jurisdiction here and I think maybe
9 they read the *Enron* case because all of the complained of
10 under *Enron* -- all of the complained of actions were
11 prepetition -- or preconfirmation I should say, and
12 oftentimes -- many instances prepetition and the parties had
13 a dispute at the time that the confirmation happened and so
14 under *Enron*, the Court has jurisdiction and we knew full
15 well, you weren't entering an Order on May 24th of '22 if
16 you didn't think you had jurisdiction.

17 THE COURT: Right.

18 MR. GENENDER: And so, but I do think as to Shell,
19 Shell's only objection they joined last night, their only
20 objection was on jurisdiction.

21 THE COURT: Their objection and the BP objection
22 still go hand-in-hand. Right? Discovery from Shell that
23 would interfere with the BP adversary proceedings has the
24 same problem if it isn't related to the PSA.

25 MR. GENENDER: But Judge, I'm going to push back

1 on that only because -- and I know we might be using it as a
2 placeholder. It's not that it has to relate to the PSA,
3 it's that BP's real position has to be -- the only logical
4 position could be that it doesn't relate to the two
5 agreements that have arbitration clauses.

6 THE COURT: You know and I know that their case
7 law -- there is case law out there that I have followed that
8 says that Rule 2004 can be a fishing expedition.

9 MR. GENENDER: Understood.

10 THE COURT: We're pretty late in the case for
11 doing fishing expeditions.

12 MR. GENENDER: Understood.

13 THE COURT: And you also know I can regulate what
14 2004 scope is and I'm not hearing a good argument why you
15 should do 2004 against Shell that would expand beyond PSA
16 disputes.

17 MR. GENENDER: We're not looking to do 2004
18 discovery beyond the -- certainly at this point beyond the
19 request that we've had in place and have stayed static since
20 May 14th of 2021. And I think that -- and they speak for
21 themselves and we're happy to defend them.

22 So we're not going on a -- we're not fishing
23 outside of any pool that we created a year and-a-half --
24 over a year ago and our briefing has been consistent on
25 that.

1 I just want to make sure that the purpose of 2004
2 is not thwarted by BP saying, oh, my gosh, they can't find
3 this out, because we're in an arbitration that they wanted.

4 THE COURT: I thought you already won that
5 argument. Now you need to demonstrate to me that have an
6 independent basis which so far the only thing you've linked
7 an independent basis to is your PSA disputes.

8 MR. GENENDER: Understood.

9 THE COURT: It doesn't matter who the witness or
10 the deponent is, their arbitration concerns are the same if
11 you were to go to Shell to get information to use in the
12 arbitration that's unrelated to the PSA, you shouldn't be
13 allowed to get it, unless you can give me some justification
14 besides the PSA, then that's the measure and I'm not
15 injuring anyone by not allowing a free fishing expedition
16 under these circumstances.

17 MR. GENENDER: Understood. Understood. I had
18 raised a notion --

19 THE COURT: Let's talk about the schedule.

20 MR. GENENDER: Thank you. Yeah.

21 THE COURT: Do you care between the 10th and the
22 17th, Mr. Duewall, versus the 21st and the 5th, I don't
23 care.

24 MR. DUEWALL: When are you giving yours?

25 THE COURT: He wants to do his this Friday.

1 (The parties confer.)

2 MR. GENENDER: But they want a new 14 days, they
3 should be able to -- they shouldn't need 14 days to respond
4 to it, I mean.

5 MR. DUEWALL: Oh. I see what you're saying.

6 MR. GENENDER: In other words we're trying --
7 we're trying to work within a new 14 days and we're willing
8 to do the work to get it done by Friday. I can't imagine
9 they need more than a few days to respond to it.

10 THE COURT: I don't know.

11 MR. GENENDER: I mean, they've already done one
12 chart.

13 THE COURT: I'm going to give both parties -- each
14 party what they say they need. So he says he wants two
15 weeks, he can take this back and you can have until the
16 21st. But I'm not going to short people on time.

17 MR. DUEWALL: Well, we'll stick with our two weeks
18 then and if we can do it quicker, we'll do it.

19 THE COURT: Okay. I'm going to leave the schedule
20 alone, then the 21st and the 5th.

21 MR. GENENDER: So their response is due two weeks
22 from when they get ours, whenever that is?

23 THE COURT: No. It's due on the 5th, yours is due
24 on the 21st, I've got holidays in there, too.

25 MR. GENENDER: Okay. And then Judge, those are

1 obviously file dander seal, right?

2 THE COURT: Yes.

3 MR. GENENDER: Thank you.

4 MR. DUEWALL: Thank you very much, Judge.

5 THE COURT: Hold on. We have another date coming
6 up?

7 MR. DUEWALL: All right. So they're going to do
8 it by Friday, we will submit ours by the 15th. I didn't
9 understand the 14 days until I saw the calendar. I'm a
10 visual learner.

11 MS. CHOI: So am I.

12 MR. GENENDER: So if I understand --

13 THE COURT: Okay. So your chart is due on the
14 10th of June, and their response is due on the 15th of June.

15 MR. GENENDER: Fantastic.

16 MR. DUEWALL: Yes.

17 THE COURT: And the parties have agreed to that?

18 MR. DUEWALL: Yes.

19 MR. GENENDER: Yes.

20 THE COURT: Because neither of you two are doing
21 any of the work.

22 MR. GENENDER: Correct, Your Honor.

23 (Laughter.)

24 MR. DUEWALL: I'll stipulate to that.

25 MR. GENENDER: I think "any" is a strong

1 statement, Judge. And that applies to Shell, toO, I assume
2 in their joinder?

3 THE COURT: Mr. Manns agreed that he would join in
4 in some manner, Mr. Duewall if he needs to do more than what
5 they're going to do. He's not required to, but he may.

6 But Mr. Manns, I'm not misinterpreting what you
7 said, right?

8 MR. MANNS: Sounds good.

9 THE COURT: All right. Thank you.

10 MR. DUEWALL: And just so the Court's clear,
11 Mr. Genender suggested that we were walking away or gave me
12 the impression we are walking away from our jurisdictional
13 arguments and our waiver arguments, but we're clearly not.
14 But I understand the direction the Court's going to go, so
15 we will leave those with Your Honor.

16 THE COURT: Nobody's waiving anything by complying
17 with rulings, which is what you guys are all -- that's all
18 you-all are doing.

19 MR. DUEWALL: Thank you, Judge.

20 THE COURT: Thank you. All right. Thank you.

21 (Proceeding adjourned at 2:38 p.m.)

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1 I certify that the foregoing is a correct
2 transcript to the best of my ability produced from the
3 electronic sound recording of the proceedings in the above-
4 entitled matter.

5 /S/ MARY D. HENRY

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